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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 256

ALLEN C. KAYE MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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reason that he was a non-resident of Illinois and the causes of action, if any, asserted in the amended complaint did not arise from the transaction of any business within the State of Illinois whereby he submitted himself to the jurisdiction of the courts of Illinois under the Illinois Civil Practice Act[1] which reads, in relevant part, as follows:

> "§17. Act submitting to jurisdiction—
> Process
>
> (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:
>
> (a) The transaction of any business within this State;".

The District Court granted the motion and dismissed the action. This appeal followed.

The only question presented by this appeal, as stated by the plaintiffs, is as follows:

> "Did the activity of the defendant Brooks in Illinois on June 11 and June 12, 1958 constitute the transacting of *any* of the business out of which this cause of action arose?"

The plaintiffs concede that the "transaction of any business", as used in §17(1)(a) of the Act, means some substantial business out of which the cause of action arose.

The relevant facts are as follows: Hansen, a broker in New York City, was there informed by Brooks that Brooks wished to sell his controlling stock in National Bankers Life Insurance Company of Dallas, Texas for $600 a share and would pay Hansen a 5% commission for negotiating such a sale. Hansen prepared an exclusive broker's contract for Brooks' signature in New York but Brooks refused to sign.

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[1] Ill. Rev. Stat. 1957, ch. 110, pars. 16 and 17.

About six months thereafter, on June 7, 1958, Hansen, from New York, called Brooks in California informing him that he thought he might have a purchaser for the stock and wanted to see him to discuss the matter. Arrangements were made to meet at the Conrad Hilton Hotel in Chicago, Illinois where Brooks was going to attend a convention.

Hansen conferred with Kaye-Martin in New York City on June 10, 1958 and the following day arrived in Chicago and met Brooks. Hansen showed Brooks a copy of a letter from Hansen to Kaye-Martin in New York wherein Hansen summarized four provisions bearing on the proposed stock sale which might form the basis for a future "formal agreement." Brooks made two changes in the letter in his own handwriting and wrote at the bottom as follows:

> "June 11, 1958. Accepted by me provided it's accepted and escrow made within 30 days; otherwise this sales offer is cancelled—Pierce P. Brooks."

At Hansen's request, Brooks penned a memorandum as follows:

> "Harry Hansen—Commission to you—5% at Price of 600.00 Per Share—is okay—
>
> PPB".

Thereupon Hansen telephoned Kaye-Martin in New York telling him of Brooks' suggested changes. Kaye-Martin conferred with his associates and wired Hansen. On June 12, 1958, Hansen delivered to Brooks the telegram reading as follows:

> "YOUR SIGNED AGREEMENT WITH DR BROOKS IS HEREBY ACCEPTED WITH CORRECTIONS AS READ TO ME OVER THE TELEPHONE TONIGHT—".

Thereafter, on July 3, 1958, the parties met in Dallas, Texas for the purpose of completing negotiations. Brooks

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No. 256

ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Respondent, Pierce P. Brooks, respectfully submits that the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above cause should be denied for the reasons hereinafter set forth.

OPINIONS BELOW.

A transcript of the oral opinion of the United States District Court for the Northern District of Illinois, Eastern Division, rendered January 7, 1959, appears in the printed appendix forming part of the record transmitted

to this Court. (App. 48). This opinion was not otherwise reported.

The opinion of the United States Court of Appeals for the Seventh Circuit, rendered June 15, 1959, affirming the judgment of the District Court, is reported at 267 F.2d 394.

STATUTE CONSTRUED.

This case involves the construction and application of Section 17 of the Illinois Civil Practice Act (Illinois Revised Statutes, 1957 Edition, Chapter 110, Section 17) with particular reference to sub-sections 17(1)(a) and 17(3) thereof. Said statute provides as follows:

"§17. Act submitting to jurisdiction—Process.

(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this State;

(b) The commission of a tortious act within this State;

(c) The ownership, use, or possession of any real estate situated in this State;

(d) Contracting to insure any person, property or risk located within this State at the time of contracting.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State as provided in this section, may be made by personally serving the summons upon the defendant or

side this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law. As amended by act approved July 19, 1955. I. 1955, p. 2238."

QUESTION PRESENTED.

The sole question presented for review is whether the Court of Appeals (in affirming the judgment of the District Court in a case removed from a state court on grounds of diversity of citizenship) properly held that respondent Brooks had not, on the facts disclosed by the pleadings, documentary exhibits, and affidavits, engaged in the transaction of any business in the State of Illinois out of which the alleged causes of action arose, within the meaning of Section 17 of the Illinois Civil Practice Act.

STATEMENT OF THE CASE.

The statement of the case contained in the petition for writ of certiorari deviates, by way of omission and by way of factual interpretation, from the findings of fact concurred in by both the District Court and the Court of Appeals.

The relevant facts, standing uncontroverted in the record, may be summarized as follows:

Petitioners, Kaye-Martin and Hansen, are residents the State of New York, while respondent Brooks is resident of the State of Arkansas. (App. 2). On about December 4, 1957, Hansen, a broker in New Y City, was there informed by Brooks that Brooks desir to sell certain stock, representing controlling interest National Bankers Life Insurance Company of Dall Texas, for $600.00 per share and would pay Hansen 5% commission for negotiating such a sale. Hansen pr pared an exclusive broker's contract for Brooks' sign ture in New York, but Brooks refused to sign the exc sive. (App. 44).

About six months later, on June 7, 1958, Hansen, w was in New York, telephoned Brooks in California forming him that he might have a purchaser for t stock and wanted to see Brooks to discuss the matte (App. 45). They arranged to meet at the Conrad Hil Hotel in Chicago, Illinois, where Brooks was going attend a meeting of the National Association of Insuran Commissioners. (App. 32).

Hansen conferred with Kaye-Martin in New York C on June 10, 1958. (App. 16). The following day arrived in Chicago and met Brooks. (App. 33). H showed Brooks a copy of a letter dated June 10, 19 from Hansen to Kaye-Martin in New York City whic Hansen summarized four provisions bearing on the pr posed stock sale which might form the basis for a futur "formal agreement." (App. 16, 33, 45). Brooks mad two changes in the letter in his own handwriting a wrote at the bottom:

> "June 11, 1958. Accepted by me provided accepted and escrow made within thirty days; othe wise this sales offer is cancelled—Pierce P. Brooks (App. 17, 33, 46).

At Hansen's request Brooks penned a memorandum on a piece of hotel stationery as follows:

> "Harry Hansen—Commission to you—5% at Price of 600.00 Per Share—is okay—PPB." (App. 24, 33, 45).

Hansen thereupon telephoned Kaye-Martin in New York City, telling him of Brooks' suggested changes. Kaye-Martin, after conferring with his associates, filed a telegram in New York City on June 11, 1958, for transmittal and delivery to Hansen at the Congress Hotel in Chicago. (App. 33, 46). This telegram read as follows:

> "Your signed agreement with Dr. Brooks is hereby accepted with corrections as read to me over the telephone tonight. Allen C. Kaye-Martin." (App. 18)

Hansen exhibited this telegram to Brooks on June 12, 1958. (App. 33, 46).

Thereafter, on July 3, 1958, Kaye-Martin, Hansen and Brooks met in Dallas, Texas, for the purpose of completing negotiations. Brooks and Kaye-Martin then and there entered into and executed a written agreement reading as follows:

> "THIS AGREEMENT, between DR. PIERCE P. BROOKS and ALLEN C. KAYE-MARTIN—each acting for account of themselves and their Associates—provides for amendments and corrections to former agreements, signed by both parties, transmitted to each other and the First Southwest Company of Dallas, Texas, by and through HARRY M. HANSEN.
>
> "SAID FORMER AGREEMENTS are identified as follows:
>
> "1. Letter to Allen C. Kaye-Martin, dated June 10th, 1958, with acceptance and penned corrections made thereon by Dr. Brooks; and

"2. Telegram to Harry M. Hansen, dated June 11th, 1958, from Allen C. Kaye-Martin, accepting above mentioned letter with acceptance and corrections made thereon by Dr. Brooks; and

"3. Letter to—and acceptance by—Allen C. Kaye-Martin, dated June 16th, 1958, providing for the method and terms of the purchase and sale of subject 10,000 shares of the capital stock of the NATIONAL BANKERS LIFE INSURANCE COMPANY, of Dallas, Texas; and

"4. Letter to FIRST SOUTHWEST COMPANY of Dallas, Texas, dated June 19th, 1958, enclosing photostats of the foregoing 'letter-agreements', as a guide for their performance as Escrowee in subject matter.

"NOW, THEREFORE, DR. PIERCE P. BROOKS and ALLEN C. KAYE-MARTIN—each acting for account of themselves and their Associates—agree to certain amendments and corrections to the foregoing 'letter-agreements' written and agreed to. The 'certain' amendments and corrections are as follows:

"A. Dr. Brooks agrees to replace, with CASH, deposited in the Company's Treasury, the Book Value of all Mortgage, Stock or other Investments in the Company's portfolio, declared to be 'Non-Admitted Assets' by the Insurance Commissioner of the State of Texas, at the conclusion of the hearing—in the Insurance Department Office in Austin, Texas—set for July 15th, 1958.

"B. Dr. Brooks agrees to reduce the sale price of all 10,000 shares of subject stock, from $600.00 to $500.00 per share.

"C. Allen C. Kaye-Martin and Dr. Pierce P. Brooks both agree to consummate this purchase and sale at the office of the Escrowee on or before July 10th, 1958.

"D. This agreement as modified by above paragraphs A., B., and C. will expire on the 10th day of July, 1958.

"The above specific corrections and amendments are hereby accepted and agreed to in Dallas, Texas, this 3rd day of July, 1958." (App. 5, 23, 34).

Brooks also "okayed" a letter for the payment of a commission to Hansen of 5% of whatever the gross purchase and sale price of the stock might be instead of $600.00 per share. (App. 25, 34).

Subsequently the parties met in New York City, where, it is alleged, they mutually agreed to execute an amendment to the agreement of July 3, 1958, appointing Irving Trust Company of New York City as escrow agent. It is alleged that respondent Brooks failed to consummate this arrangement and conveyed the stock in question to other persons. (App. 9).

This action was thereupon commenced in the Superior Court of Cook County, Illinois, by petitioners and two additional plaintiffs. (App. 1). None of the four plaintiffs was a citizen or resident of the State of Illinois (App. 2), and none of the fifteen original defendants (App. 31, 37) was a citizen or resident of the State of Illinois. In said action Kaye-Martin sought damages for breach of the contract of July 3, 1958, alleging that the "fair cash market value of said stock, on and after July 3rd, 1958, was and is Seven Hundred ($700.00) Dollars per share" (App. 10); and Hansen sought to recover his commission of 5% on the sale of Brooks' stock under his contract of July 3, 1958, based on a sales price of $500.00 per share instead of $600.00 per share (App. 14), both contracts having been executed in Dallas, Texas (App. 23; 25).

Personal service of process was had on Brooks in Dallas, Texas. The action was removed to the United States District Court for the Northern District of Illinois, Eastern Division, on grounds of diversity of citizenship. (App. 1). Fourteen co-defendants were voluntarily dismissed on motion of plaintiffs in that Court (App. 1), and one of the plaintiffs, Jack Yarmove, requested and was granted leave to withdraw from the action prior to the District Court's determination of the issues. (App. 47). An amended complaint was filed in which Brooks was designated as the sole defendant. (App. 2).

Brooks moved to quash summons and return of service of summons and to dismiss the action for lack of jurisdiction over his person, on grounds, *inter alia*, that he had not transacted any business in the State of Illinois within the meaning of Section 17(1)(a) and that the causes of action asserted did not "arise from" such activity in the State of Illinois within the meaning of Section 17(3) of the Illinois Civil Practice Act. (App. 26). The District Court granted this motion and entered an order of dismissal. (App. 47). An appeal was taken to the United States Court of Appeals for the Seventh Circuit, one of the original plaintiffs, John S. Leahy, failing to join in the appeal. (App. 64). The Court of Appeals affirmed the judgment of the District Court on June 15, 1959, and denied petition for rehearing on July 13, 1959. (App. A, 8a, 9a).

ARGUMENT.

I.

CERTIORARI SHOULD BE DENIED SINCE THE DECISION SOUGHT TO BE REVIEWED TURNS ENTIRELY UPON AN APPRECIATION OF THE PARTICULAR FACTS OF THE CASE, WHICH FACTS HAVE BEEN CAREFULLY ANALYZED BY BOTH THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, AND THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Both the District Court and the Court of Appeals have painstakingly examined the various pleadings filed in this action, the eight documentary exhibits attached to the amended complaint, and the four affidavits of fact submitted on behalf of the respective parties. That this examination was thorough is apparent on the face of the opinions rendered by the two lower courts, which quote copiously from the record.

On the basis of their analysis of the fact situation thus disclosed, both the District Court and the Court of Appeals have found that the isolated, limited, overnight activity of the respondent Brooks in the State of Illinois did not constitute "the transaction of any business" in Illinois within the meaning of Section 17(1)(a) of the Illinois Civil Practice Act.

It has long been the policy of this Court to decline review, by way of certiorari, of decisions which turn upon the facts of an individual case, where the governing facts have been determined and concurred in by two lower courts. It is submitted that the record in this

case discloses no circumstances necessitating a departure from that well-settled policy. If this Court were to grant certiorari in this case to decide whether the facts of the case, already passed upon by two lower courts, fall within or without the purview of the Illinois statute, it is difficult to see why it would not be called upon to do so with respect to each specific fact situation arising in the future in each such individual case.

II.

CERTIORARI SHOULD BE DENIED SINCE THE COURT OF APPEALS HAS, IN A DIVERSITY CASE, CONSTRUED AN ILLINOIS PROCEDURAL STATUTE IN A MANNER WHOLLY CONSISTENT WITH APPLICABLE DECISIONS OF THE SUPREME COURT OF ILLINOIS.

The Supreme Court of Illinois has sustained the constitutionality of Section 17 of the Illinois Civil Practice Act, interpreting it to reflect a legislative purpose to assert jurisdiction over nonresident defendants "to the extent permitted by the due process clause [of the Federal Constitution]." *Nelson* v. *Miller*, 11 Ill. 2d 378, 389; 143 N.E. 2d 673, 679 (1957). While the Court was there specifically concerned with Section 17(1)(b) which confers *in personam* jurisdiction in the event of "the commission of a tortious act within this State", and not with Section 17(1)(a), the Court was nevertheless careful to point out that the proper basis in *any* case for the assertion by a state of *in personam* jurisdiction over a nonresident

> "* * * is to be found in the legitimate interest of the State in providing redress in its courts against persons who, having *substantial* contacts with the State, incur obligations *to those entitled to the State's protection*." (Emphasis supplied.)

Section 17(1)(a) of the Illinois Civil Practice Act was first construed and applied by the Supreme Court of Illinois in *Grobark v. Addo Machine Company*, 16 Ill. 2d 426, 158 N.E. 2d 73 (1959), the court having granted leave to appeal from a decision of the Illinois Appellate Court upholding the quashing of extra-territorial service of summons on a nonresident defendant. Notwithstanding a factual situation disclosing greater contacts, ties and relations between the nonresident defendant and the State of Illinois than are present in the instant case, the Supreme Court of Illinois affirmed the decision of the Illinois Appellate Court, holding that the nexus between the nonresident defendant and the state of the forum was not sufficiently substantial to render applicable the provisions of Section 17 of the Illinois Civil Practice Act.[1]

The Court in *Grobark* took pains to emphasize that the case did not *directly* present a constitutional question and that a constitutional question will not be *directly* raised in any given case unless the state erroneously assumes jurisdiction over the person of the nonresident defendant in violation of the due process clause.

> "While the constitutional question is always present in determining whether a state, consistent with due process, can enter an *in personam* judgment against a nonresident defendant, nevertheless it is

[1] See also **Orton v. Woods Oil and Gas Co., 249 F. 2d 198 (CA 7, 1957)** which, while not a decision of a state court of last resort, has been characterized at Page 9 of the 1958 Cumulative Annual Pocket Part, supplementing Chapter 110, Section 17, Smith-Hurd Illinois Annotated Statutes, as "a well reasoned opinion in which the authorities and text comments respecting Section 17 were carefully reviewed" and in which case an order quashing extra-territorial service of process on a nonresident was affirmed, despite greater contact, qualitatively and quantitatively, by the defendant with the State of Illinois than was present in the instant case.

> important to avoid placing the cart before the horse. If, for example, there are no minimum contacts with the State in a particular case, it will be unnecessary to decide whether the State, consistent with due process, can assume jurisdiction, unless the State assumes jurisdiction erroneously, and thereby violates due process." *Grobark* v. *Addo Machine Company*, 16 Ill. 2d 426, 431; 158 N.E. 2d 73, 76.

On one occasion prior to *Grobark*, an attempt was made to take a direct appeal to the Supreme Court of Illinois from a trial court order allowing a nonresident defendant's motion to quash extra-territorial service of process grounded on Section 17(1)(a). Illinois law permits direct appeal to the Supreme Court of Illinois as a matter of right where the validity and constitutionality, as opposed to the mere construction, of a statute is involved. On that occasion, in *Berlemann* v. *Superior Distributing Company*, 12 Ill. 2d 386, 146 N.E. 2d 41 (1957), the Supreme Court of Illinois held that only the construction and application of Section 17(1)(a) were directly involved, not its validity or constitutionality. Accordingly, the court did not have jurisdiction on direct appeal and ordered the cause transferred to the Illinois Appellate Court.

It is apparent from the cases cited above that the District Court and the Court of Appeals in the instant case have done nothing more than to construe and apply an Illinois procedural statute in the light of the particular facts presented, and that they have done so in a manner wholly consistent with applicable Illinois law. No constitutional question is directly presented. As the Court of Appeals notes in its opinion, it is only if one were "to hold otherwise" that invasion of the constitutional rights of the *defendant* would become a question for determination. (App. A, 6a).

Petitioners have no constitutional right to try their case in Illinois, any right to ground suit against a non-resident on extra-territorial service of process having been created by the Illinois Legislature on terms and conditions prescribed by it. This would be true, it should be noted, even if petitioners were residents of Illinois, instead of New York, and thus fell "within the ambit of the State's legitimate protective policy." *Nelson* v. *Miller*, 11 Ill. 2d 378, 384; 143 N.E. 2d 673, 676.

Moreover, the Illinois Legislature has, in Section 17(3), limited operation of the statute to causes of action arising solely from acts performed within the State of Illinois. This limitation, the Court of Appeals notes, places the facts of the instant case farther beyond the pale of the application of the statute. (App. A, 6a).

Certiorari would appear to be unwarranted where, as here, the Court of Appeals, in deciding a non-federal question in a diversity case, has properly given effect to the purpose and intent of the Illinois Legislature, as that purpose and intent have been construed and interpreted by decisions of the Supreme Court of Illinois.

III.

CERTIORARI SHOULD BE DENIED SINCE THE DECISION OF THE COURT OF APPEALS IS IN COMPLETE ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

The petition filed herein does not directly state, as a reason for requesting certiorari, that the decision of the Court of Appeals below is in conflict with applicable decisions of this Court. The Court of Appeals in its opinion expressly cites and purports to follow *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), *McGee* v. *International Life Ins. Co.*, 355 U.S. 220 (1957).

and *Hanson v. Denckla*, 357 U.S. 235 (1958). (App. A, 5a, 6a). Petitioners allege, however, on page 2 of their petition that the decision of the Court of Appeals subjects those three decisions of this Court to a "totally new condition and limitation."

It is respectfully submitted that the decision of the Court of Appeals has no such effect. The precise holding below is that the single, isolated meeting in Chicago between Hansen and Brooks was not, in the factual context of this case, a sufficiently substantial contact with the State of Illinois to permit Illinois courts to assert *in personam* jurisdiction over Brooks under Section 17(1)(a) of the Illinois Civil Practice Act. (App. A, 6a).

> "On this record as it comes to us it is clear that those 'minimal contacts' which are an absolute prerequisite to personal jurisdiction of the courts of Illinois over a defendant are totally lacking as to Brooks." (App. A, 7a).

As *one* of the factors giving rise to this holding, the Court of Appeals points to the "wholly fortuitous" nature of the isolated meeting in Illinois between Hansen and Brooks. Brooks journeyed to Illinois to attend a meeting of the National Association of Life Insurance Commissioners, not to transact business with persons within the ambit of the legitimate protective policy of the State of Illinois. His activity in Illinois could hardly be characterized as "systematic" or "continuous"; it was "irregular" and "casual" (*International Shoe Co. v. Washington*, 326 U.S. 310, 320), and was related in only an incidental and preliminary way to the causes of action sued upon, which allegedly arose in Texas or New York at a later date.

Illinois had no "substantial connection" with the contracts ultimately sued upon, nor does Illinois have a

"manifest interest in providing effective means of redress" for petitioners, who are residents of New York. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223.

The "new and substantial limitations" which petitioners profess to detect in the decision of the Court of Appeals are entirely the product of their misinterpretation of that decision. Petitioners *assume* throughout their petition that respondent has "actually transacted business" in Illinois, when the very determination made by the court below was that respondent had not transacted any business in the State of Illinois out of which the alleged causes of action arose, within the meaning of the Illinois statute. Their conclusions are reached only by begging the very question presented for determination.

IV.

CERTIORARI SHOULD BE DENIED SINCE THE DECISION BELOW IS NOT IN CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS OR WITH THE DECISION OF A STATE COURT OF LAST RESORT ON THE SAME SUBJECT MATTER.

Certiorari has frequently been granted where the decision sought to be reviewed is in *direct* conflict with the decision of another Court of Appeals or with the decision of a state court of last resort passing upon *the same subject matter*. While petitioners claim such conflict at pages 2, 13 and 14 of the petition for writ of certiorari, careful analysis discloses their claim to be without merit.

As has been noted earlier in this brief, the decision of the Court of Appeals in the instant case is wholly consistent with the construction and application given Section 17(1)(a) by the Supreme Court of Illinois in *Grobark v. Addo Machine Co.*, 16 Ill. 2d 426, 158 N.E. 2d 73, the initial case construing and applying that section of the

Illinois Civil Practice Act. It is likewise completely in harmony with *Nelson* v. *Miller*, 11 Ill. 2d 378, 143 N.E. 2d 673, although the court in that instance was confronted with a problem arising under Section 17(1)(b) of the statute, rather than Section 17(1)(a).

No *direct conflict* with respect to the *same subject matter* exists in the other cases cited by petitioners. None of them involves a construction or application of Section 17(1)(a) and Section 17(3) of the Illinois Civil Practice Act. Each of them can be distinguished, not only on the basis of the statutory variables involved, but also on the basis of the factual situations involved. Moreover, in each of them the nonresident defendant had far more substantial contact with the state of the forum than did Brooks in the instant case. See, for example, the discussion of *Compania De Astral, S.A.* v. *Boston Metal Co.*, 205 Md. 237, 107 A. 2d 357, in the District Court's opinion herein. (App. 59).

The instant case presents none of the aspects of direct conflict which were present in *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, where certiorari was granted after Texas courts had refused to give full faith and credit to a judgment of a California court based on extra-territorial service of process. Nor do the circumstances of the instant case bear any resemblance to *Hanson* v. *Denckla*, 357 U.S. 235, where certiorari was granted to review conflicting decisions of courts of the States of Florida and Delaware stemming from the same matter.

CONCLUSION.

Two lower federal courts have held that respondent has not, on the facts disclosed by the record in this case, engaged in the transaction of any business in the State of Illinois, out of which the alleged causes of action arose, within the meaning of Sections 17(1)(a) and 17(3) of the Illinois Civil Practice Act. The decision sought to be reviewed is in complete harmony with applicable decisions of the Supreme Court of Illinois and of this Court, and presents no direct conflict with any decision of any other Court of Appeals or of a state court of last resort passing upon the same subject matter.

Accordingly, respondent respectfully prays that the petition for a writ of certiorari in this cause be denied.

Respectfully submitted,

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